

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 4:06-CR-370 (CEJ)
	)	
WILLIAM GLENN KIMBRELL,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on remand from the United States Court of Appeals for the Eighth Circuit, directing the Court to rule on defendant's motion, pursuant to Fed.R.App.P. 4(b)(4), for extension of time to file a notice of appeal.

Judgment was entered against defendant on November 15, 2006. Defendant's notice of appeal was untimely filed twenty-nine days after judgment. In the instant motion, defense counsel cites his illness and "the press of other matters" as grounds for excusable neglect in his failure to file the notice of appeal on time.

Under Rule 4(b)(1)(A)(i), defendant's notice of appeal was due within 10 days after entry of the judgment. The court may, upon a finding of excusable neglect or good cause, extend the time to file a notice of appeal for a period not to exceed 30 days. Rule 4(b)(4). The factors relevant to a court's determination of whether a party's neglect is excusable include "the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Gibbons v.

United States, 317 F.3d 852, 854 (8th Cir. 2003), quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993). The reason given for the late filing is given the greatest weight. Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 463 (8th Cir. 2000).

Counsel states in the motion that his illness and other business obligations prevented him from filing the notice of appeal timely. Counsel does not state how long he was incapacitated. Similarly, the motion does not indicate the inability of counsel's colleagues in the Federal Public Defender's Office to file a timely notice of appeal in counsel's absence. See Gibbons, 317 F.3d at 855 (counsel's illness not excusable neglect).

Accordingly,

**IT IS HEREBY ORDERED** that the motion of defendant William Glenn Kimbrell for leave to file a notice of appeal pursuant to Fed.R.App.P. 4(b)(4) [Doc. #31] is **denied**.

**IT IS FURTHER ORDERED** that the Clerk of Court shall return this case to the United States Court of Appeals for the Eighth Circuit.

  
CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE

Dated this 28th day of February, 2008.